

February 1956

Masthead Volume 58, Issue 2

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Recommended Citation

Masthead Volume 58, Issue 2, 58 W. Va. L. Rev. (1956).

Available at: <https://researchrepository.wvu.edu/wvlr/vol58/iss2/1>

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West Virginia Law Review

Published by the College of Law of West Virginia University. Official
publication of The West Virginia Bar Association.

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STUDENT NOTES

THE CY PRES DOCTRINE IN WEST VIRGINIA.—The trust doctrine of cy pres involves the theory that where a general charitable intent is expressed on the part of a donor to a trust, and either no particular object is mentioned or the original object is illegal, impossible or impractical so that it fails completely or does not exhaust the res, the court will apply the funds to charitable objects cy pres (as near) to the donor's intent as the law will allow. This method of preserving charitable trusts by effectuating a trust similar to that envisioned by the settlor has been given wide favor in many jurisdictions¹ but has encountered death-dealing difficulties in this state. It is universally held that an essential characteristic of a charitable trust is that the beneficiary of the trust, as distinguished from the object or purpose, must be indefinite. While the West Virginia court has exhibited reluctance to enforce trusts which have indefinite objects, in cases where a definite object is shown the court has allowed the trust as an ordinary private trust even if the object so named was a type of charity. The hostility of the West Virginia court toward trusts which have indefinite beneficiaries was inherited from early Virginia precedents which are contra to trust law in nearly all other states and which have been apparently repudiated in that state.²

¹ 3 SCOTT, TRUSTS § 399 (1939); 2 BOGERT, TRUSTS AND TRUSTEES § 433 (1946); RESTATEMENT, TRUSTS § 396 (1935).

² VA. CODE §§ 55-26 to 55-34 (Michie 1950).